

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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ANTHONY KENNETH ANDERSON

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendant.

Case No. 2:21-cv-02099-RFB-BNW

**ORDER DISMISSING AND CLOSING  
CASE**

Pro se Plaintiff Anthony Kenneth Anderson brings this civil-rights action for events that allegedly occurred during his incarceration with the Nevada Department of Corrections at Southern Desert Correctional Center. (ECF No. 1-1). On April 14, 2022, this Court denied Anderson's application to proceed in forma pauperis because he has three strikes under 28 U.S.C. § 1915(g) and failed to demonstrate that he was under imminent danger of serious physical injury. (ECF No. 8). The Court gave Anderson until May 14, 2022, to pay the full \$402 filing fee. (Id. at 2.) The Court expressly warned Anderson that "this action will be dismissed without prejudice unless" he timely paid the filing fee. (Id.) The deadline has passed, and Anderson has not paid the filing fee.

**I. DISCUSSION**

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic alternatives. See In re Phenylpropanolamine  
2 Prod. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting Malone v. U.S. Postal Serv., 833  
3 F.2d 128, 130 (9th Cir. 1987)).

4 The first two factors, the public's interest in expeditiously resolving this litigation and the  
5 Court's interest in managing its docket, weigh in favor of dismissing Anderson's claims. The third  
6 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of  
7 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court  
8 or prosecuting an action. See Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth  
9 factor—the public policy favoring disposition of cases on their merits—is greatly outweighed by  
10 the factors favoring dismissal.

11 The fifth factor requires the Court to consider whether less drastic alternatives can be used  
12 to correct the party's failure that brought about the Court's need to consider dismissal. See Yourish  
13 v. Cal. Amplifier, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic  
14 alternatives before the party has disobeyed a court order does not satisfy this factor); accord  
15 Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive  
16 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives  
17 prior to disobedience of the court's order as satisfying this element[,]” i.e., like the “initial granting  
18 of leave to amend coupled with the warning of dismissal for failure to comply[,]” have been  
19 “eroded” by Yourish). Courts “need not exhaust every sanction short of dismissal before finally  
20 dismissing a case, but must explore possible and meaningful alternatives.” Henderson v. Duncan,  
21 779 F.2d 1421, 1424 (9th Cir. 1986). Because the Court cannot operate without collecting  
22 reasonable fees, and litigation cannot progress without a plaintiff's compliance with court orders,  
23 the only alternative is to enter a second order setting another deadline. But issuing a second order  
24 will only delay the inevitable and further squander the Court's finite resources. Setting another  
25 deadline is not a meaningful alternative given these circumstances. So the fifth factor favors  
26 dismissal.

**II. CONCLUSION**

Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on Anderson's failure to pay the full filing fee in compliance with the Court's April 14, 2022, order.

The Clerk of Court is directed to enter judgment accordingly and close this case. No other documents may be filed in this now-closed case. If Anderson wishes to pursue his claims, he must file a complaint in a new case and pay the full \$402 filing fee.

DATED THIS 12<sup>th</sup> day of August, 2022.



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RICHARD F. BOULWARE, III  
UNITED STATES DISTRICT JUDGE